

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference and Regular Meeting

June 11, 2015

The Conference and Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia and Mr. Sylvester. Mr. Daniel Bernstein, Board Attorney, was also present.

CARRIED FROM MAY 28, 2015 WITHOUT FURTHER NOTICE:

App.#9-15: 569 Springfield Avenue, LLC, 569 Springfield Ave., Bl.610, L.8 (HB-3 Zone)

The applicant is proposing to demolish an existing single family dwelling and construct one new building containing eight condo units (with four units on the first floor and four units on the second floor). Based on the definitions and intent of the ordinance, such as Section 2.1.1B and Section 6.3.3A.4.C, a use variance in accordance with MLUL 40:55D-70(d)(1) is needed because the ordinance allows certain types of "townhouses" with no more than six attached dwelling units and requires strict adherence to the requirements for townhouse developments. As a result, the proposed building, as designed, is not a permitted use. The applicant also seeks variances for exceeding permitted coverage ratios and driveway width as well as any other variances that may be needed.

Mr. Sullivan announced that this application has been carried to a future date.

Clarification of Conditions in Resolution of Approval – Page 4 of Resolution

App.#31-14: Heritage Manor Homes LLC, 154 Hillside Avenue, Bl. 2402, L. 42 (R-15 Zone)

The application for a single-family house to be constructed after demolition of an existing dwelling was approved at the Board of Adjustment meeting on November 13, 2014. The approval was memorialized by resolution which was adopted on December 11, 2014. The applicant and his neighbor will be present to discuss the condition in the resolution dealing with the location of the generator and condenser.

Richard Bauer, applicant, and his neighbor, Mr. Hunter, were present. Mr. Bauer stated that the resolution of approval of his application stated that the air conditioning unit must be located in the back of the house. He discussed the issue with Mr. Hunter and advised him that if the unit were placed on the side of the house there would be less noise. They have reached agreement and Mr. Hunter has no objection to changing the location of the unit.

Open to Public

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had comments or questions.

A motion was made by Mr. Miller, seconded by Mr. Delia, with respect to App #31-14: Heritage Manor Homes LLC, 154 Hillside Avenue, Bl. 2402, L. 42 to approve the amendment of the approval to provide that the air conditioning units will be located on the right side of the house. The amendment to the approval will be subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Nappi and Mr. Delia voting in favor and none opposed.

Application for Review:

CARRIED FROM MAY 28, 2015 WITHOUT FURTHER NOTICE :

App.#4-14: Berkeley Heights Realty, Inc., (Enrite gas station), 525 Springfield Ave., Block 611, Lot 7 (HB-3 Zone)

Application for preliminary and final site plan approval with variances for a canopy over the gas station pumps and a kiosk as added accessory structures to the site. The applicant appeared before the Board in 2013 (App.#26-12: Ilya Shlakman), and a Certificate of Prior Nonconforming Status of the gasoline service station and repair garage was granted by the Board of Adjustment.

Steven Schaffer, attorney for the applicant, stated that the applicant has reduced the height of the proposed canopy from 21' to 17'. The height of the sign is now higher than the canopy and the canopy is lower than the peak of the existing building. The applicant believes the canopy will improve the site and the height of the canopy is now consistent with most of the canopies in Berkeley Heights. His client also discussed with Mr. Mistretta putting some landscaping at the corner of the site where the sign is located. As to the suggestion that the chain link fence be replaced with a wood fence, the applicant would prefer not to replace the fence for safety reasons. Mr. Schaffer presented Summation Exhibit 2 – rendering of the site with the smaller canopy.

Mr. Tobia stated that the canopy has been pushed back 2' further from Springfield Avenue and there are no other changes to the setbacks.

Open to Public

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had comments or questions.

The Board members discussed the application as revised and expressed opinions with regard to approval or denial.

A motion was made by Mr. Smith, seconded by Mr. Boyer, with respect to App # 4-14: Berkeley Heights Realty, Inc., (Enrite gas station), 525 Springfield Ave., Block 611, Lot 7, to deny the application. The Board's findings and decision will be set forth in a Resolution of Memorialization to be adopted by the Board. The roll call vote was 5-2 with Mr. Sullivan, Mr. Boyer, Mr. Smith, Mr. Siburn and Mr. Delia voting in favor and Mr. Miller and Mr. Nappi opposed.

Informal Review of Submitted Application:

App.#10-15: Elizabeth & Horacio Marcos, 124 Rutgers Avenue, Block 1704, Lot 6

Proposed principal one-story addition to a house on a corner lot. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because the addition will not meet the setback requirements along Central Street, an unimproved paper street. Existing nonconforming issues are: setbacks from Rutgers Avenue and Central Street as well as lot width. (R-15 Zone)

Horacio Marcos stated that he wants to put a 18' x 13' addition onto the back of his house and the addition will not meet the setback requirements from Central Avenue.

In response to questions, Mr. Marcos stated that the addition will be a single story, 279 square feet, and it will be a year-round room with heat and electricity.

The application was deemed complete and scheduled for hearing on July 23, 2015. The applicant was instructed to consult with the zoning officer regarding the fact that the property fronts three streets and to check the accuracy of the application. The applicant was further instructed to provide photographs of the proposed location of the addition and to send out the required notice.

Adoption of Resolutions

2 Resolutions for:

App.#11-14: 174 Snyder Ave BH LLC, 174 Snyder Ave., Block 801, Lot 56 (R-15 Sone)

Seeking a d(1) use variance for a two-story residential dwelling built in 1910 and located in the R-15 single family zone which has been operating as a four-family home. The applicant and owner of the property would like to undertake interior improvements, most notably a relocation of the existing laundry facilities from the interior living area on the second floor to the attic area above the second floor units. Other changes include new exterior windows and removal of the existing Bilco door. The existing shed and garbage enclosure will be relocated to comply with the setback requirements or removed entirely. Relief is also needed from Section 8.1.1B.1 "Expanding a nonconforming use" due to the interior expansion into the existing attic space for use as a utility room. Existing nonconforming issues are principal use; principal front-yard setback; existing "other" coverage of 22.44%, which includes the 800 sq. ft. stone driveway (allowed: 10%); and existing shed (which encroaches into the rear-yard setback).

Joseph Murray, attorney for the applicant, stated that there are portions of the resolution that need clarification as to the details of the approval.

Antonio Santorella, applicant, stated that the Board had suggested two one-bedroom units and one two-bedroom townhouse style unit. The architect has suggested that it would be better to have two one-bedroom units on the first floor and one two-bedroom unit on the second floor. The architect has also revised the plan to have mechanical systems in each unit to eliminate those systems in the basement and attic and the need for lowering the basement.

Discussion took place regarding the plans for the interior of the building. The applicant's architect will meet with Mr. Mistretta to submit the interior plans.

A motion was made by Mr. Delia, seconded by Mr. Siburn, to adopt the Resolution as to denial of the application for use as a four-family home. The roll call vote was 4-1 with Mr. Sullivan, Mr. Smith, Mr. Siburn and Mr. Delia voting in favor and Mr. Miller opposed.

A motion was made by Mr. Smith, seconded by Mr. Delia, to adopt the amended Resolution as to approval of the application for use as a three-family home. The roll call vote was 5-0 with Mr. Sullivan, Mr. Boyer, Mr. Smith, Mr. Delia and Mr. Sylvester voting in favor.

App.#12-15: Anco Environmental Services, Inc., 40 Russo Place, Bl.1901, L. 40

Anco Environmental Services, Inc. ("Anco") is a company involved in oil tank removal and installation and also operates as a clean-up contractor. The property is also used for vehicle and equipment repair and as a storage yard for equipment. The fuel oil that is removed is retained in a tanker truck at 40 Russo Place and then sold. A company related to Anco is engaged in the cleaning and servicing of oil burners. The owner of the property was cited for noncompliance of Section 17.1.1 – "Use of land without receiving all required permits of approval." A zoning permit was not issued for the current use. The applicant is requesting approval to continue to operate its business – which is not an approved use – and would like to obtain all variances needed (including relief from Sections 17.1.1 "Prohibitions," Section 6.3.6A "Permitted Principal Uses," Section 6.3.6B "Permitted Accessory Uses," Section 6.1.1B "Schedule of General Regulations," Section 6.4.3A.6 "Nuisance Factors," Section 6.4.3B.26., and Section 6.4.3B.48.) There are also accessory structures – such as fuel tanks – on the property that do not comply with the required setbacks and/or permitted accessory uses. (LI-Zone)

John Frieri, attorney representing the applicant, stated that a zoning ordinance violation was issued against the property for not having approval of the use and outdoor storage. The applicant purchased the property and rented it to the bus company. He moved his business– home oil tank remediation, onto the property and his use included repair and maintenance of his trucks just like the buses were repaired and maintained. The violation was issued because there was no permit for a change in use from the bus depot to the environmental contractor. The applicant's business involves removing oil tanks from the ground, transport to the property and pumping of residual oil out of the tank. The oil is drained and

pumped into a truck on the property and then a tanker comes in, pumps the oil from the truck and takes it away.

Michael Geller, engineer and planner stated that wetlands are located offsite across the railroad tracks and there is probably a 50' buffer. The applicant is looking for a bifurcated application to obtain approval for the use first and then submit a site plan application.

The application was deemed complete and scheduled for hearing on July 23, 2015 with proper notice required. The applicant was instructed to be prepared to provide testimony about environmental issues including how long the oil remains on the site and where it goes when it is recycled.

Adoption of Resolutions

2 Resolutions for:

Appl#11-15: Berkeley Square, L.L.C., 240-264 Springfield Ave., Bl. 801, L. 23&24

The property (Primrose School and retail building) was subject to Site Plan approval through the Zoning Board of Adjustment, App.#18-12. As part of the approval, one "plaza" sign, 6' x 4' (24 sq. ft.) was approved for installation. The applicant is now proposing to install another freestanding or ground sign to accommodate the retail building which contains three tenant units. The proposed sign would be 4' x 6' x 7' high. Relief is needed from Section 10.1.4C of the Municipal Land Use Procedures Ordinance which states that the site plan, as approved, shall be binding on the applicant, Section 10.8.8A which makes failure to comply with the approved site plan a violation of the ordinance, and Section 5.4.2 (Zone HB-2) permitting only one plaza sign.

A motion was made by Mr. Siburn, seconded by Mr. Smith, to adopt the Resolution as to the approval of the second free-standing ground sign for the retail building. The voice vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Delia, Mr. Nappi and Mr. Sylvester voting in favor.

A motion was made by Mr. Miller, seconded by Mr. Siburn, to adopt the Resolution as to the approval of the dry cleaning tenant for the retail building. The voice vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Delia, Mr. Nappi and Mr. Sylvester voting in favor.

Adoption of Minutes

May 28, 2015

A motion was made by Mr. Siburn, seconded by Mr. Delia, and carried by unanimous voice vote to adopt the minutes of the May 28, 2015 Regular Meeting as presented.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Boyer, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 8:30 PM.

Regina Giardina, Secretary Pro Tem